

**UNITED STATES DISTRICT
COURT DISTRICT OF ARIZONA**

IN RE: BARD IVC FILTER

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MDL NO. 2641

JUDGE DAVID G. CAMPBELL

This Document Relates to:

MAYLS v. C.R. BARD, INC., AND BARD PERIPHERAL VASCULA INC.
Civil Action No. 2:19-cv-00755-DGC

MOTION TO SUBSTITUTE PARTY AND AMEND COMPLAINT

Counsel for Plaintiffs Thomas Malys and Dorothea Malys respectfully move this court to substitute Dorothea Malys, the surviving spouse, as the Personal Representative for the Estate of Thomas Malys, Deceased, pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, and to file an Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2).

1. Plaintiff Thomas Malys's case was filed on or about February 6, 2019 (*MALYS v. C.R. BARD, INC., AND BARD PERIPHERAL VASCULAR INC.*; Case No. 2:19-cv-00755-DGC).

2. All active Defendants have been served with process pursuant to Second Amended Case Management Order No. 4 (CMO 4).

- a. On or about February 19, 2019, Defendant C.R. Bard, Inc., was served by the Court's electronic filing system with the Complaint and Request for waiver of service.
- b. On or about February 19, 2019, Defendants Bard Peripheral Vascular Inc., was served by the Court's electronic filing system with the Complaint and Request for waiver of service.

3. On or about July 5, 2019 Plaintiffs' counsel was informed that Thomas Malys passed away on or about June 23, 2018.

4. Thomas Malys action against Defendants survives his death and is not extinguished.

5. Plaintiffs' counsel filed the Notice and Suggestion of Death on or about July 11, 2019 [Doc. 19456].

6. On or about June 25, 2018, City of Plaioa Twd., PA named Dorothea Malys as the informant of decedent the Personal Representative for the Estate of Thomas Malys

7. Plaintiff thus moves to substitute Dorothea Malys, as Personal Representative for the Estate of Thomas Malys, Deceased, as Plaintiff in the present action.

8. Additionally, Counsel seeks to amend the Complaint, as well as the caption of the Complaint to correct the proper Plaintiffs (specifically Dorothea Malys, as Personal Representative for the Estate of Thomas Malys, Deceased) and to update and include information, allegations and actions within the Complaint to reflect that Plaintiff Thomas Malys is now deceased.

9. Pursuant to Federal Rules of Civil Procedure 15(a)(2) a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

WHEREFORE, Counsel for Plaintiffs, Thomas Malys and Dorothea Malys, respectfully request the Court grant Plaintiffs' Motion to Substitute Dorothea Malys as Personal Representative for the Estate of Thomas Malys, Deceased, and to grant leave to file the Amended Complaint and directing the Clerk of the Court to enter the Amended Complaint, attached hereto, into the record of this matter.

Dated: July 11, 2019

Respectfully submitted,

By: /s/ Monte Bond

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ATTORNEY FOR PLAINTIFF(S)

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2019 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

Dated: June 20, 2019

Respectfully submitted,

/s/ Monte Bond

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